THE MINOR IN JEWISH LAW*

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CHAPTER I. THE MINOR IN THE BIBLE

THE problem of the minor played but a small rôle in Biblical times. As a matter of fact, a technical term to denote the minor as a class, is not found in the Bible.[1] The simplicity of early Jewish life did not offer enough opportunities for the development of a sharp line of demarcation between minor and adult. Nor was the organization

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[1] Of course we meet in the Bible such terms as ילד, יונק, טף, עולל. But these terms stand merely for physically immature persons, and do not stand for a class of individuals whose rights, duties, and responsibilities are different from those enjoyed by a grown-up person. These terms are never used in the Bible in connexion with phases of life that enter into the realm of law and responsibility. Quite in contrast is the use of the term קטן in Talmudic literature, where it denotes legal and religious prematureness. The terms קטן and גדול in the Bible are merely relative, i. e. they denote a relatively younger and a relatively older person respectively. But they do not stand for the minor and the mature person as they are used in Talmudic literature. The terms נער and נערה stand for young persons, and have no reference to the minor whatever.

of society in Biblical times conducive to the formation of a code of laws dealing with the minor. For at that period the family and not the individual formed the social unit. The father was the head of the family, and had full control over it during his lifetime. Even the children of a mature age, as we shall see later, were subject to his power. The question of the amount of individual freedom to be enjoyed by the minor, which arises at a time when the individual forms the social unit, has no room when even the adult son is without individual rights and powers.[2]

We cannot accordingly expect to find special laws dealing with the minor. Instead, we find laws dealing with the son and the daughter. The family forming the social unit, and the father, the head of the family, being the important factor in the community, it was necessary to provide specifically for the extension of certain laws to the son and the daughter. The son and the daughter seem to be, as it were, in a state of tutelage, and are very often classed together with the proselyte, slave, widow, and orphan.[3]

Nevertheless, we find a few laws in the Bible, which, thought not the result of a conscious treatment of the minor, pertain exclusively to the minor. Already at this early period, the emphasis which Judaism lays upon the duty of instructing the young, asserted itself. Again and again does the Bible command, 'Thou shalt teach thy children'.[4] Sometimes, the instruction began on the

[2] Nowack, *Heb. Arch.*, 152, &c.

[3] Exod. 21. 31; Deut. 16. 11, 14; Exod. 20. 10. The necessity of mentioning the orphan, the widow, and the proselyte is also due to the fact that they do not constitute heads of families, and would, therefore, not be thought of as possessing the religious status of the head of the family.

[4] Exod. 13. 8, 14; Deut. 4. 10; 6. 7, 20-24; 22. 46.

father's own initiative,[5] and, sometimes, it was to be given to the children as answers to their questions.[6] The latter method usually accompanied the performance of certain ceremonies, the significance of which the children might desire to know.

The Bible also imposes on the father the duty of circumcising his son, and of thus uniting him with his God and his race.[7] In memory of the first-born that were killed in Egypt, the Jews were commanded to redeem their first-born sons. That duty was, therefore, put on the fathers.[8] No festivities seem to have accompanied either the circumcision or the redemption of the son, but a festivity of great importance must have taken place when the child was weaned.[9]

The rearing of the child usually devolved upon the mother. In large and well-to-do families, a nurse was taken for the children,[10] and a teacher was hired for them.[11] The children in turn were to reciprocate this love by honouring and revering their parents.[12]

The emphasis the Bible lays on the instruction of children is well known. Even very young children were required to be present at the public reading of the Law in the seventh year.[13] This had a double purpose: (1) that of the instruction of the children, (2) and of initiating them into Jewish traditional and ceremonial life. This is the only instance in the Bible where the minor is specifically mentioned with regard to the observance of a certain ceremony. It seems also that young children

[5] Exod. 13. 8; Deut. 6. 7. [6] Exod. 13. 14; Deut. 6. 20-29.
[7] Gen. 21. 4. [8] Exod. 13. 13. [9] Gen. 21. 8.
[10] 2 Sam. 4. 4. [11] 2 Kings 10. 1, 5. [12] Exod. 20. 12.
[13] Deut. 31. 12, 13.

were present at the public reading of the Law on many other important occasions.[14]

The question of supporting the children does not seem to have given much trouble in Biblical times. Every child lived with his father, and was supported, as a matter of course, in return for the services he rendered. The case was, however, different with the fatherless. They needed special protection. The orphan was, therefore, classed with the Levite, the widow, the poor, and the proselyte, or the stranger, persons who as well as the minor possessed no property, and, therefore, needed special protection. The fatherless was to share with the Levite, the stranger, &c., in the tithes of the third year,[15] in the sheaves that have been forgotten,[16] and in the single grapes and the small fruit that have been left.[17] The Bible finds it especially necessary to warn against vexing the orphan, and against doing injustice to him.

Since the minor was not recognized as a class in Biblical times, we ought not to expect to find in the Bible the mention of a definite age to mark the attainment of one's majority. Yet there are enough data to show that the age of twenty was of great importance, and brought with it new responsibilities and privileges.

In the first place, its importance is to be seen in the political and civil life. One could not enter the military service before twenty.[18] The census of the Israelites taken by Moses included only those who reached the age of

[14] See Josh. 13. 35. According to the Rabbis, the term טַף includes also children who cannot understand what is read before them. Nevertheless, this practice served some purpose. It prepared the parents for the future training they were to give to their children (Yer. Hag. 1. 1; Babli, *ibid.* 3).

[15] Deut. 14. 28–9; 26. 12. [16] Deut. 24. 19. [17] Deut. 24. 21.

[18] Exod. 30. 14; 38. 26; Num. 1. 3–46; 24. 2, 4.

twenty.[19] This age also brought certain religious rights. According to 1 Chron. 23. 24–7, priests and Levites entered into their service, at least during the second temple, at the age of twenty. This regulation was established in the time of David, though the Biblical law fixes sometimes twenty-five and sometimes thirty as the proper age for the beginning of the temple service.[20] The contribution of half a shekel for the sanctuary was imposed only on those who were of the age of twenty.[21] The age of twenty also is an important division in the estimation of the different values of a person in the case of a vow to the sanctuary.[22] Thus we see that the age of twenty played an important rôle in Biblical times, and we may properly call it the age of maturity or of majority.

So much for the minor in the Bible. A different picture of the minor is presented to us by post-Biblical literature. As Jewish life became more complex, and new institutions arose that were not known in Biblical times, the problem of the minor began to press itself more and more on the Jewish mind. It is then that the minor began to be dealt with as a special class, and that a prominent place was given to him in Jewish law and custom. But law and custom were not always stable. The law dealing with the minor frequently changed. To give a presentation of the treatment the minor received at the hands of Jewish law and custom as they developed in later Jewish life, and also to point out as far as possible the origin of certain developments, is the purpose of the following chapters.

[19] *Ibid.*

[20] Num. 8. 23; 4. 1–4.

[21] Exod. 30. 12–14; 28. 26.

[22] Lev. 27, 3–8.

CHAPTER II. AGE OF MAJORITY

A. Age of Twenty as the Age of Majority.

We have already seen in the previous chapter that in Biblical times, the age of twenty constituted the age of majority. Professor Ginzberg has called attention to the following instances in Talmudic literature where the age of twenty plays an important part.[23] Heavenly punishment is not inflicted for sins committed before one reaches the age of twenty.[24] No one can sell real estate before he is twenty.[25] No judge under twenty could pronounce sentence of death.[26] If one does not show any signs of puberty, he is, according to one opinion, a minor until twenty.[27] These instances are of course survivals of the Biblical times, in which the age of twenty was the age of majority. This is not the place to examine why the age of twenty has survived just in these points. Suffice for the present that we find in Talmudic literature certain callings in life depending on the age of twenty. This fact, together with the data mentioned above, prove clearly what we maintained before, that at an early period the age of twenty was the age of majority.

B. Age of Physical Matureness as the Age of Majority.

But while the age of twenty as the age of majority is found in Talmudic literature as a survival, there looms

[23] See *Monatsschrift*, LVI, p. 300; Löw, *Die Lebensalter*, p. 157.

[24] Yer. Bik. II, 64; Sanh. 30 b. [25] B. B. 156 a.

[26] Yer. Sanh. IV, 22 b.

[27] Nid. V, 9; Yeb. VI, 6; Tosef. Nid. 2. The Talmudic interpretation which maintains that he becomes of full age at twenty only when, in addition to the absence of signs of puberty, there is also the presence of signs of emasculation, is, as we shall see later, erroneous.

forth in the same source an age which we do not meet at all in pre-Talmudic literature. That age is the age of physical or sexual ripeness, which is gradually substituted for the age of twenty as the age of majority.[28]

Physical ripeness, or the age of puberty, forms the age of majority also in old Roman law.[29] In the later Roman law, the age of puberty brings with it only certain rights and duties, but majority is attained at twenty-five.[30] But the ancient Roman age of puberty corresponds to the Talmudic age of puberty. Life in ancient Roman law is divided into two parts, that which precedes and that which follows the age of puberty. Those who do not attain the age of puberty are called impuberes and correspond to the Talmudic Ḳeṭanim; those who do attain it are called puberes, and correspond to the Talmudic gedolim.[31] The old Roman law resembles the Talmudic law also in the fact that the female attains her age of puberty earlier than the male, and an individual physical examination is necessary for determining the age of puberty.

There are many physical symptoms which indicate approaching puberty. But the main criterion is the appearance of hair on certain parts of the body.[32] The usual

[28] Terumot, I, 3; Yebamot 96 b; Nid. V, 9; VI, 11, 12; Tosef. Nid. VI, 2, 5, 7.

[29] See Löw, *Die Lebensalter*, p. 139.

[30] See Dropsie's translation of Mackeldey's *Roman Law*, p. 129.

[31] See Savigny, *System*, vol. III, pp. 56, 109.

[32] Nid. 47, 48. According to one opinion, it is possible for the other symptoms to begin to develop before any hair begins to grow, and, therefore, they are not counted upon in determining the age of puberty, while the opinion of the majority is that it is impossible for other symptoms to appear before any hair begins to grow, and, therefore, one attains majority with the appearance of these symptoms. Some scholars note also the physiological fact that the appearance of such symptoms is sometimes accelerated by the occupation and surroundings of a person. Female minors were

age at which symptoms of puberty appear is the twelfth year of a female and the thirteenth of a male.[33] Symptoms that appear before the ninth year are disregarded, between the ninth and the twelfth (and of course the eleventh of a female, a fact not mentioned in the source) are disregarded according to one opinion, while, according to another, they are an indication of approaching puberty.[34]

If one does not show any symptoms after thirteen, he is considered a minor until the thirty-sixth year of his life.[35] After thirty-six, he attains his majority, even though he has no signs of puberty. These two laws hold good only when the person in question shows no signs of being a eunuch. If he does, he attains his majority at twenty, according to Bet Hillel, or at eighteen, according to Bet Shammai, even though he lacks the signs of puberty.[36]

examined by women. But as women were not qualified to act as witnesses, their testimony with regard to the appearance of symptoms was therefore valid only when no important issues were involved (Nid. 48; Tosef. VI, 3).

[33] Nid. V, 6; Babli 45; Tosefta VI, 2.

[34] Nid. 46 a; Tosefta VI, 2. The early Amoraim also discuss whether the appearance of hair during the thirteenth year should be taken into account. Some scholars put it under the same status as the appearance of hair before the thirteenth, and declare that only the hair that appears on the first day of the fourteenth year is considered as a symptom, while others consider it an indication of physical matureness (Nid. 45 b, 46). The old view seems, however, to have been the latter, as can readily be seen from the Tosefta Nid. VI, 2, of which the Baraita discussed by these scholars must be an abbreviation. The explanation of the same Baraita given by those who maintain the other view is hardly satisfactory. The Baraita prefers the expression בן י"ג ויום א' to the expression מי"ב שנה ועד י"ג שנה, because the last day of the thirteenth year ends the period during which the appearance of hair is doubtful. From the first day of the fourteenth, it is assumed that hair did appear.

[35] Yeb. 96 b; Niddah V, 9; Babli 47 b.

[36] *Ibid.* The laws of this paragraph are not expressed in the Mishnah,

Before twenty, though he shows signs of emasculation, a man is still a minor, if no hair appears.[37] If a eunuch shows a growth of hair at twenty, we assume that he attained his majority at thirteen.[38] The hair that begins to grow before thirteen does not make him of full age, even after he passed thirteen, and, therefore, if no other hair is to be found after he passed thirteen, he is still

but are maintained by the Amoraim, and are in keeping with their interpretation of the Mishnah. The physiological basis of these laws would be that the absence of signs of puberty at a late age, when there is no evidence that the individual is a eunuch, is due to a retarded development, and consequently the individual is still to be considered a minor. It is worth while, however, to speculate about the correctness of their interpretation. The expression והוא סריס in Nid. V, 9, which the Amoraim take to mean 'that he proved himself to be a eunuch', and to imply that otherwise he is still a minor, may also mean 'that he is considered a eunuch', and therefore of full age, because the lack of hair is in itself a sign of emasculation. If the following reading of the Tosefta is correct, it supports our view: בן כ' שנה שלא הביא שתי שערות אע"פ שהביא לאחר מכאן הרי הוא כסריס לכל דבר בת כ' שלא הביאה שתי שערות, אע"פ שהביאה לאחר מכאן הרי היא כאיילונית לכל דבר (Tosef. Nid. VI, 2).

In the passage in Yeb. 80 other symptoms of emasculation are given, and, according to the Amoraic explanations, it is these symptoms and not the absence of hair that make us consider one a eunuch. This is, however, not evident from the passage itself. As a matter of fact, the passage seems to contain two different strata of laws, one beginning with איזהו סריס, and the other with ואלו הן סמניו. From this passage it seems that the absence of two hairs is the determining factor in declaring one a eunuch.

In speculating on this point, we should also keep in mind that at an earlier period, it could never have happened that one should be considered a minor until his thirty-sixth year. At the earlier period, when the age of twenty was the age of majority, the physical symptoms did not count. A knowledge of the physiology of those times, if it was different from ours in that respect, may help us to determine whether the view as obtained from the reading of the Tosefta or that of the Amoraim is correct.

[37] Eben ha-Ezer 155, 12. This, of course, is to be inferred from the time of twenty fixed in Nid. V, 9.

[38] This is so according to Rab., but not according to Samuel (Yeb. 80 a).

a minor.[39] There is also a view that the first thirty days of the twentieth year count as a whole year, and, therefore, the laws that are to be applied when one reaches twenty, are applied also to the one who reaches nineteen years and thirty days.[40]

C. The Age of Thirteen and the Bar Mizwah Institution.

From the data we have given in the last section, we see that it was the physical symptoms and not a definite age that ushered in the age of majority. But, as we have also pointed out before, the age of thirteen was the age at which signs of puberty usually appeared. Hence, when no serious issues were involved, one was considered of full age at thirteen, without undergoing a physical examination, on the assumption that signs of puberty have developed. Thus, the rabbinical scholars speak very often of the age of thirteen as being the age of majority, without referring at all to the signs of puberty, assuming that one possesses them at this age.[41] This assumption is made by R. Ḥama b. Abba,[42] when he says: 'Until thirteen years, the son is punished for the sins of the father, from now on, each one dies for his own sins.' This assumption also underlies the statement, 'At thirteen for the fulfilment of the commandments',[43] and the statement of R. Eleazar in Gen. r. 63. It is also because we act on this assumption, that we can determine ages which have to be counted backwards from the age of thirteen: such ages as when the minor

[39] Nid. 48 a. [40] Nid. 47 b.

[41] Abot 5, 21; Nid. V, 6; Tosef. Yom. Hak. V, 2; Nid. 48 a.

[42] Midrash Zuta, Rut, ed. Buber, p. 47: Yalkut Rut 600.

[43] Abot V, 21.

is to enter the religious life, and when his vows begin to be valid. If we did not act on this assumption, these ages could never be determined. Raba goes further, and declares that we must act on this assumption, though it may lead to a rabbinical transgression (Niddah 46). In cases, however, which may involve serious consequences, and lead to transgressions of a Biblical law, a physical examination is necessary before we consider one of full age (*ibid.*).

The acknowledgement of one's attainment of majority, at the age of thirteen, on the assumption that he possesses the physical symptoms, developed into the Bar Mizwah institution.[44] How early it originated is still an open question. Löw maintains that it dates from the fourteenth century.[45] Other scholars trace it back to Talmudic times.[46]

Low holds that the Bar Mizwah was not only an innovation, but also a reform of the fourteenth century. The Bar Mizwah not only meant an introduction of a new festival with new ceremonies, but a substitution for the Talmudic physical examination in determining the attainment of the age of majority.[47] This is, however, erroneous. The Bar Mizwah did not abolish the requirement that signs of puberty must be present. It only implies the Talmudic assumption mentioned before, that one becomes physically mature at the age of thirteen. Löw is mistaken if he thinks that in Talmudic times every minor underwent a physical examination before being declared of full age.

[44] The title Bar Mizwah, given to one who attains his age of majority, is not to be met with earlier than the fourteenth century. Before that period he is called בר עונשין. See Löw, *Die Lebensalter*, 210.

[45] See Löw, *ibid.*, 210-217.

[46] *Jewish Encyclopedia*, s. v. 'Bar Mizwah'.

[47] Löw, 210.

As we pointed out before, even in Talmudic times, one attained one's majority at thirteen on the general assumption that he must have become pubescent at this age. On the other hand, in cases where important issues depend on the majority of the individual, i.e. where the acting on this assumption may lead to transgression of the law, as in the case of Mi'un or of the Levirate, a physical examination was required even after the Bar Mizwah institution had been introduced.[48] Thus the Bar Mizwah does not do away with the ancient physical examination.

What is uncertain is whether at an early period official recognition was given to the attainment of majority at the age of thirteen in the form of some sort of festival. If it was, it certainly lacked the main features of the later Bar Mizwah.[49] If there was any solemnization at all of the Bar Mizwah, it consisted merely of bringing the boy to the priest and the elders, 'for blessing, encouragement and prayer, that he may be granted a portion of the Law, and in the doing of good works'.[50] He probably also read the Torah, and his father pronounced the benediction, 'Blessed be he who freed me from the responsibility of this child'.[51]

[48] Eben ha-Ezer, 155, 12; 169, 10.

[49] The right to put on the phylacteries and be called to the Torah was enjoyed in Talmudic times even before he became thirteen (Tosef. Hag. 1. 2; Meg. 23 a; Tosef. Meg. IV, 11).

[50] See Soferim, XVIII, 5, with the corrections of the Gaon of Wilna.

[51] Midrash Hashkem (see Grünhut's *Sefer ha-Likkutim* 1, 3 a).

The arguments, however, given by Dr. Kohler in his article on Bar Mizwah in the *Jew. Ency.* against Löw are not convincing. Of course, we must admit that at or about thirteen one became of full age at an early date. But there are no solid proofs for an early date of the Bar Mizwah rite.

The text in Masseket Sof. is corrupt, and is, therefore, not reliable. Josephus, in his *Vita* 2, tells only that he was known for his learning at the age of fourteen, but he tells nothing concerning the Mizwah rite.

Later, however, the Bar Mizwah rite assumed a more definite form, and developed into a significant institution. The Bar Mizwah is called up to the Torah.[52] In some communities he is called up as Maftir. The father recites silently the benediction, 'Blessed be he who freed me from the responsibility of this one'.[53] Some families celebrate the Bar Mizwah also by a banquet.[54] Bright boys deliver an homily usually of a very pilpulistic character.[55] In some communities the Bar Mizwah receives the blessing of the Rabbi.

The moment one becomes Bar Mizwah, he becomes responsible for his sins, and is obliged to observe the Law. While in post-Talmudic times the minor was prohibited from using the phylacteries, a prominent feature of the Bar Mizwah was his putting on the phylacteries.[56] In the seventeenth century the custom originated of having the minor put on the phylacteries a short time before

Gen. r. 63 must not necessarily be taken to speak of the father's benediction as an institution. It simply tells in a striking manner of the great burden of which the father is relieved when his son becomes of full age. (The burden is the responsibility that rests on the father for his minor son's sins. See Midrash Zuta, Rut, p. 47.)

The words תהלות יספרו (Magen Abot on Abot V, 21; Mezaref, p. 25) must not necessarily refer to any benediction. It may refer to the observance of commandments in general. The word הגדיל (see Midrash Hashkem in Grünhut's *Sefer ha-Likkutim*) does not necessarily refer to a certain day. Nor do the words ואומר ברכו את ד' (*ibid.*) refer to a definite day, as it is evident from the preceding words ברוך שמך בכל יום (*ibid.*).

[52] This feature became prominent only when the Talmudic custom of calling the minor to the Torah became obsolete: see Löw, 211.

[53] This has its origin in Gen. r. 63, which, as was stated before, has nothing to do with a benediction. Later it was erroneously taken to be for one.

[54] See Yam shel Shelomoh on B. K. VII, 37.

[55] Löw, 215.

[56] See Orah Hayyim XXXV; Dar. Moshe, *ibid.*

he reached thirteen.[57] From now on, he can be counted as a member of a quorum.

He was entitled to these privileges on the assumption that at this age he already had the signs of puberty.[58] Otherwise, he would still be a minor. In case of Ḥalizah or the Levirate, where the action on this assumption may lead to the transgression of a Biblical law, evidence of signs of puberty is still required.[59, 60]

To sum up. There are enough data in the Bible and in the Talmud to show that at an early time the age of twenty was the age of majority. At a later time, it was superseded by the age of puberty. The age of puberty was originally determined by the presence of signs of sexual maturity. Experience had shown that these signs do not appear in all individuals at exactly the same time, and, therefore, a year was allowed for the variation. The earlier law, therefore, maintained that one became of full age, if the signs appeared at any time between the age of twelve and thirteen. The later Law, which deviated a little from practical life, limited the *terminus ad quem* to the first day of the fourteenth year. But one who reaches this age is assumed to possess the symptoms, and, therefore, becomes of full age, a physical examination being necessary only in special cases. The recognition of the attainment of majority at this age has developed into the Bar-Mizwah institution.

[57] Mag. Abr. XXXIV, 4.

[58] See Yam shel Shelomoh B. K. 37; Orah Hayyim 55, 5, note of Isserles.

[59] See Yam shel Shelomoh, *ibid.*

[60] For further information about the Bar Mizwah, see Mezaref 41; Responsa Maharil 51; Güdemann, *Geschichte des Erziehungswesens und der Kultur der Juden in Deutschland*, III, Vienna, 1888. Taylor, *Sayings of the Jewish Fathers*, 1897, p. 97.

D. Ages for Different Degrees or Stages of Maturity.

Besides the principal age of majority discussed in the previous section, there are different ages the attainment of which does not make the individual of full age, but marks certain degrees of maturity, gives the individual rights, and imposes on him duties not possessed by him before.

The age of seven marks a certain degree of maturity. At this age the minor acquires the right of entering upon transactions concerning moveable property.[61] The female minor has, as it were, two ages of majority. The first one is the age of puberty (*na'arut*) corresponding to the age of maturity of the male, and is attained at the age of twelve. At this age, she is considered mature and enjoys, therefore, all the rights of an adult female, except that she is still partially subject to the power of her father.[62] At her second age of majority (*bagrut*) which is attained at twelve and a half, she is entirely emancipated from the power of her father.[63]

Then there are ages that depend on certain physical developments, which, however, are not indications of mental ripeness. A female at the age of three, and a male at the age of nine, attain a certain degree of sexual ripeness, and, therefore, those laws that obtain with certain sexual relationships are in full force when the minors of these respective

[61] Git. 59a. [62] Nid. V, 7; Ketubbot 46a.

[63] *Ibid.* The Mishnah also gives three different physical symptoms characteristic of a female, corresponding to three different periods: (1) the period beginning with her birth and ending with the first age of majority; (2) with the first age of majority, and ending with the second age of majority; and (3) with the second age of majority, and further on.

ages are partners in those relationships. She can be acquired as a wife by the sexual act. Illegitimate intercourse with her brings on the wrongdoer all the punishments due to illegitimate intercourse with an adult female.[64] The same is true of the male of nine years. The Levirate performed by the sexual act is valid. The punishments that relate to illegitimate intercourse are inflicted on those that commit illegitimate intercourse with a minor of this age.[65]

Certain degrees of maturity are also acquired by the attainment of certain degrees of mental ripeness. When a female minor has intelligence enough to take care of her bill of divorce, she can be divorced.[66] When a minor is mentally ripe enough to distinguish between a nut and a splinter, his action of acquisition is valid for himself but not for others. The marriage of a female minor at this age if the father is dead is valid to the extent that it requires at least the action of Mi'un to annul it. If he has sufficient intelligence to return an object given to him, he can also perform the action of acquisition for others.[67]

An important age that depends on mental ripeness is the age at which the vows of the minor begin to be valid. The vows of a female after twelve, and of a male after thirteen, are valid even when they do not know to whom the vow is directed. But the vows of a female within her twelfth year, and of a male within his thirteenth year, are valid only when they have proven on a personal

[64] Nid. V, 4. [65] *Ibid.* V, 5.

[66] Gittin 64 b. According to Rashi, she cannot be divorced before that age, even when her father receives the bill of divorce for her. According to R. Tam, she cannot be divorced before that age only when she herself receives the bill (see *ibid.*, Rashi and Tos.).

[67] *Ibid.*

examination to know to whom the vow is made.[68] According to one opinion, the Ḥalizah performed by a female at the age when her vows are binding, is valid.[69]

Quite unsettled in Talmudic times was the age at which a female minor could exercise the right of Mi'un. According to one opinion, she exercises this power until two hairs appear, and, according to another, until the growth of hair is more marked.[70] If, however, she lived sexually with her husband after two hairs appeared, all agree that she loses the right of Mi'un. A controversy arose in the academy concerning the daughter of R. Ishmael who came before the tribunal weeping, and carrying her child on her shoulders. Some wanted to grant her the right of Mi'un. But finally a vote was taken, and it was decided that she loses the right with the appearance of two hairs.[71] In the twelfth century R. Jacob b. Meïr declared that since we are not skilful enough in this generation to detect the presence of two hairs, and since it is assumed that with her first age of maturity (age of twelve) this sympton appears, her Mi'un should be invalid after she reaches the twelfth year, even though we did not detect, on a personal examination, the appearance of two hairs.[72]

On the other hand, certain rights can be acquired only at a late age. The power of buying and selling real estate can be attained only at the age of twenty.[73]

[68] Nid. V, 6; see Tosefta, *ibid.* V, 15, 16, 17.

[69] Gittin 65 a, see *ibid.*

[70] Nid. VI, 2.

[71] Nid. 52, see also Tosef., *ibid.* VI, 5, 6.

[72] Nid. 52 b; Eben ha-Ezer 155, 22.

[73] That one should have the power of purchasing movable objects at an earlier date is quite natural. As the Rabbis remarked, this is so because his subsistence depends on it. The minor could not get along if his

From the data in the last section we see that Jewish law with regard to age shaped itself on natural and psychological principles. It did not put down one fixed age as the only one that marks a change in a man's life. It recognizes a gradual development, gradual degrees of physical and mental ripeness, and as the minor is gradually attaining these degrees of physical and mental ripeness, he is gradually granted the various rights and powers.

CHAPTER III. DUTIES OF THE FATHER

A. SUPPORT OF MINOR CHILDREN.

(1) *Support of Minors up to the Age of Six.*

AS the title of this chapter indicates, there are duties in Jewish law to be fulfilled towards the minor children, incumbent only on the father, but not on the mother. The latter was just as helpless as the minor children themselves, and both of them were dependent on the will of the father. Nor was her status changed after the death of her husband, for while the minor children (sons, of course) became the owners of a part or of the entire estate of the father, she remained just as dependent as she had been before. This being the case, there could be no room in Jewish law for any discussion of the duties of the mother.

As was mentioned in the first chapter, we do not find in the Bible a provision imposing on the father the duty to support his minor children. Such a provision was

transactions of movable objects were not valid. But one must be more conservative, and have more experience with regard to buying real estate, and therefore this power with regard to real estate is acquired only at the age of twenty.

unnecessary. Parents supported their children as a matter of course. This parental function was deeply rooted in the life of the people as a moral duty, so that there was no necessity for it to be legally sanctioned.

In time, however, conditions changed. Persecution and poverty, as will be shown later, wrought havoc in Jewish life, so that parents refused to support their children, and cast them as a burden on the shoulders of the community. It was then that the question as to the legal duty of supporting the minor children began to form a subject of discussion in the rabbinical academies. The earliest trace of such a question is, as we shall see later, to be found in connexion with the posthumous duty of supporting the minor daughter. But as we have chosen to follow the order from the more usual and immediate to the less usual and immediate duties, instead of an order according to their chronological origins, we shall discuss at present the duty of the father to support his minor children under the age of six.

That the nursing or the suckling of a child is to be provided for by the father is evident from the Mishnah, which declares that the husband is to give to his wife an additional fee for the suckling of the child, if the alimony of the wife goes through the hands of another.[74] There enters, however, another element in this matter. Whatever may be the law with regard to the duty of the father to

[74] Ket. 69 b. It is true, however, that it may be asserted that the Mishnah does not speak of this additional fee as the fulfilment of a legal duty towards the child, but towards his wife. The Mishnah does not say that he has to pay the fee in case he is unwilling to support the child. It is probable that the Mishnah tells us merely that if the father wants to fulfil his moral duty to support the child, the wife is legally bound to the husband to do the suckling, and is to be recompensed for it.

support the minor children, the mother, as can readily be seen, from what was said at the beginning of this chapter, was free from such duties. It should, therefore, be understood that if there is a duty on the mother to suckle the child, it does not mean that she owes this duty to the child, but to the husband, this duty being one of many other duties which the wife undertakes to perform towards her husband at the time of marriage.[75]

The suckling of the child being a duty toward the husband, the woman is relieved from this duty the moment the matrimonial relations between wife and husband cease. She is not, therefore, required to suckle the child when she is divorced.[76] If, however, the child is old enough to recognize the mother, and refuses to suck from another woman, the divorced wife is forced to suckle it, but the husband is to pay her for it.[77]

The power of the Court to force the divorced woman to suckle the child likewise implies no maternal obligations. The life of the child being in danger, the mother is forced to perform this function as a humanitarian duty. Even a strange woman is forced to supply this necessity for the child when it refuses to suck from any other woman.[78]

If the woman brought into marriage two maid-ser-

[75] Ket. 59 b. This is so only according to the school of Hillel, but according to the school of Shammai there is no duty at all on the mother to suckle the child. Dr. Ginzberg explains this difference between the school of Hillel and the school of Shammai by the fact that the former school represented the wealthier classes, and had, therefore, the tendency to lessen the duties of the wife towards her husband, while the later school represented the poorer classes, and had, therefore, the opposite tendency.

[76] Ket. 59 b; Tosef., *ibid.* V, 5. The case is, however, as we shall see later, different with a widow.

[77] *Ibid.*

[78] See Haggahot Alfasi, Ket. 59 a; Eben ha-Ezer 82, 5, gloss of Isserles.

vants, she is relieved from suckling this child, just as she is thereby relieved from other duties which she owes to the husband, as cooking, washing, &c.[79]

The time during which the child learns to recognize its mother is, according to Johanan, fifty days, and, according to Rab, three months. Samuel maintains that we cannot set a definite time for every child, but that each child is given a period according to its intelligence.[80]

A widow is supposed to suckle the child.[81] The reason for the difference between the divorced woman and the widow with regard to suckling the child, is, that since the separation between the former and her husband is usually due to ill-feeling between them, the woman may not be willing to perform this duty to her husband after the divorce has taken place. The separation between the widow and her husband, however, is due to a natural cause, so that the woman will be willing to assume that obligation.

A widow must not marry within twenty-four months after the child was born, for in case of her becoming pregnant, she may be rendered unfit to suckle the child, and the second husband may be unwilling to go to the expense of having him nourished by any other food.[82]

[79] Ket. 59 b.

[80] Ket. 60 a. This is according to the tradition given by Rami the son of Ezekiel. According to another tradition, the time set by Samuel is thirty days (*ibid.*). The Yer. (Ket. V, 6) has in the name of Samuel three days. It seems that the reading of the Yer. is the correct one, for there would be no more reason for the surprise expressed in the Talmud at the thirty days period of Samuel than there is at the fifty days period of R. Johanan. And yet the Talmud is silent about the view of R. Johanan. But there is more ground for the surprise at the view of Samuel, when the reading is 'three days'.

[81] Ket. 60; Yeb. 42 a.

[82] *Ibid.*

She may not marry within twenty-four months, even when she procured a wet-nurse for the child, because it may happen that the nurse will change her mind, and return the child to the mother. If, however, it is certain that the nurse will not withdraw, the mother may marry as soon as the nurse is procured.[83]

As to the duty of the father to support a child during the age that extends from the expiration of the suckling period up to a comparatively older age, nothing definite is found in the Mishnah. But R. Ulla Rabba declared at the gate of the house of the patriarch that, though they said, 'a man need not (legally) support his minor children', yet he must support them (legally) when they are very young.[84] The limit that separates those that are very young from those somewhat older is decided by the Rabbis to be six.[85]

(2) *Support of Minor Children after the Age of Six.*

The duty of the father to support the minor children beyond the age of six (according to R. Ulla Rabba, as interpreted in the Babylonian Talmud), was first discussed in the Academy of Jamnia, where its head Rabbi Eliezer announced that there is no legal duty on the father to support his children.[86]

[83] Ket. 60; Yeb. 42 a.

[84] Ket. 65 b. The Yerushalmi (Ket. IV, 8) has, however, the following reading: אמר ר' עולא מתניתא אמרה כן שיהא אדם זן את בניו קטנים. No mention is here made of a difference between an older and a younger age. This point, as we shall see later, is of great importance.

[85] *Ibid.* The words beginning with ועד כמה up to the word מדקתני is certainly an interpolation in the statement of R. Ulla. The Yerushalmi does not have it at all (see previous note).

[86] R. Eliezer mentions only the daughter, but he certainly refers to the

Afterwards, people began to take advantage of this absence of a legal restraint. After the Hadrianic persecutions, when conditions became very bad, fathers refused to support their children, and caused them to become a burden on the community. Therefore, the Court in Usha found it necessary to impose, by enactment, a legal duty on the father to support his children. This enactment was not, however, considered authoritative. Rabbi Johanan in a tone of depreciation says, 'we know the men who took part in the decision', implying thereby that they are not to be relied upon.[87]

But while the Rabbis did not care legally to force a man to support his children, they took great pains to make him do so from moral motives. They declared that to support children is tantamount to doing continuous charitable acts.[88] Sometimes, they would denounce those who declined to comply with this moral duty. R. Judah would compare this man to a monster, and would denounce him in public, saying, 'A monster gave birth to children, and then he throws them on the community.'[89] Ḥisda would have this matter announced publicly, and would say, 'A raven wants her children, this man does not want them.'[90] Rabba would say to such a man, 'Are you satisfied that your children are supported by charity?'[91] Rabbi Johanan said to a man whose name was Ukba, 'Wicked Ukba, support thy children'.[92]

son also. He makes his statement in connexion with the support of the daughter, because one may think that she is more entitled to support than the minor son, either because of the fact that she possesses this right after the father's death, or because of the fact that there is greater disgrace for her to live on charity than for the son (see Ket. 49 a).

[87] Yer. Ket. IV, 8. [88] Ket. 50 a. [89] Ket. 49 b.
[90] *Ibid.* [91] *Ibid.* [92] Yer. Ket. IV, 8.

According to Rabbi Meïr, it is more virtuous to support the male than the female children, because in this way we enable the former to study the Torah. According to Rabbi Judah, the support of the daughter is more virtuous than the support of the sons, because it is a greater humiliation if the former go about begging.[93] Rabbi Johanan attributes no virtue whatever to the support of children, either of daughters or of sons.[94]

The Talmud further declares that the scruples we have in legally forcing the father to support his children are only justified when he is poor. But when he is rich, we can force him to do it as a matter of charity.[95]

[93] Ket. 49a. TheYer. Ket. IV, 8 reads as follows: איתתניי תני הבנים עיקר ואיתתנאי תני הבנות עיקר. Evidently this corresponds to the two different opinions mentioned in Babli. The Yer. gives another reason for the opinion that lays more emphasis on the support of daughters, namely, that deprivation may cause them to lead an immoral life. This variation between Babli and Yer. is accounted for by, and also proves, the fact that the reasons for the different opinions were not given originally by the respective authors of these opinions, but by later scholars.

[94] Ket. 49a. Such an opinion is rather strange. There is no doubt that the words לאחר מיתת אביהן אבל בחיי אביהן אלו ואלו אינן ניזונים in the statement of R. Johanan, as given by Babli, is a later addition, and does not come from R. Johanan. The original reading was ר' יוחנן אמר חייב לזון את הבנות. This original reading is found in Tosef. Ket. IV, 8, and Yer. IV, 8, and is given in these two sources without any modification, in contrast to a statement which reads מצוה לזון את הבנות ואין צריך לומר את הבנים. This fact shows clearly that the Yer. and the Tosef. understood R. Johanan to refer to the support of the daughter, not after the father's death, but while he is alive. The view of the Tosef. and of the Yer. is the correct one, for there is no reason why R. Johanan should have found it necessary to state that there is a posthumous legal duty on the father to support the minor daughter, since this law, as we shall see later, has been known already to be an old tradition, and was conceived of as being an enactment of the court. The Mishnah speaks of it as a well-known tradition (see Ket. 59 b).

[95] Ket. 49 b; see Tos., *ibid.*

During the absence of the father, as when he has gone to a distant place, his children are not to be supported from his property.[96] The fact that he did not advise the Court before he left to use his property for this purpose, is to be taken as sign that he is unwilling to support his children. According to R. Ulla Rabba, as interpreted in the Babylonian Talmud, this is true only with regard to children older than six. But children under six are to be maintained from his property.[97]

Some scholars maintain that even children after six are to be supported from his property, if the father already supported them after they reached that age.[98] When, however, the father has become insane, so that we may not infer from his silence his unwillingness to have his children supported from his property, they are to be supported even after they reached that age.[99]

The Academy in Usha enacted that if a father gives away all his property to his son, he and his wife are still to be supported from this property.[100] The Palestinian Talmud declares that the minor children of the donor are also to be supported from this property.[101]

The Palestinian Talmud also raises the question whether there is a duty on a man to support his grandchildren.[102] It seems that the Palestinian Talmud comes

[96] Ket. 48 a. [97] Eb. Haez. 71, 2.

[98] Ket. 48 a ; see Tos., *ibid.* Eben ha-Ezer, 71, 2, gloss of Isserles.

[99] *Ibid.*

[100] Ket. 49 b ; Yer., *ibid.* IV, 8. The Babli seems not to accept this enactment, while the Yer. is more favourable towards it.

[101] Yer., *ibid.* The Babli mentions nothing concerning the minor children in such a case. This is due to the fact that the Talmud Babli does not agree with this enactment of Usa, and also to the fact which will soon be mentioned.

[102] Yer. Ket. IV, 8. The same Pene Moshe makes the question בני

to the conclusion that grandchildren differ from one's own children in that respect. The reason the Talmud gives is, however, not quite clear.[103]

(3) *The Posthumous Duty of Supporting the Minor Daughter.*

The earliest trace of a conscious response to the question of supporting the minor children is to be found in connexion with the posthumous duty of the father to support the minor daughter. This was also a natural result of conditions. The property of the father was, in accordance with the Biblical law, inherited by the male

בנים מה הן refer to the passage beginning with the words הכותב נכסיו לבניו. But there is no reason for it. It can as well refer to the general duty of supporting grandchildren.

The Talmud Babli does not raise this question either. This is already the fourth point wherein a difference has been indicated between Babli and Yerushalmi (see ch. III, notes 84, 94, and 101). These four points lead to the conclusion that the Yer. differs with Babli in the general principle of supporting the children, and holds that the father is legally bound to support his minor children. R. Johanan is quoted in the Yer., as has been shown before (note 94), to have said expressly חובה לזון את הבנות. This statement, we maintained (*ibid.*), refers to the support of the daughter while the father is alive. According to the Yer., R. Ulla makes no difference between children under the age of six and children above that age. His statement, as the Yer. has it, שיהא אדם זן את בניו קטנים, refers to minor children in general. The fact that the Babli likewise fails to mention anything concerning the support of the minors when the father has given away his property to his son, or to raise the problem as to the support of the grandchildren, proves, and at the same time is explained by, this difference between Yer. and Babli concerning the support of minor children.

[103] Yer., *ibid.* The statement בני בנים קפצה עליהן ירושת תורה is evidently placed in opposition to another opinion, which would put the grandchildren on the same level with one's own children. But the reason supposed to be contained in the statement, as to why they should not be placed on the same level, is not quite evident. The explanation given by the Pene Moshe is not satisfactory.

children, and the female children were left at the mercy of the male children. Should the male children refuse to support their sisters, the latter would be rendered entirely helpless. Therefore, it was found necessary at a very early time to make it a provision of the marriage contract (Ketubbah) that in case the husband dies, the female orphans should be maintained from his estate until they get married.[104] This provision must not necessarily be written down, for it is binding on him, not by the contract in which it is entered, but by virtue of its being a court enactment which one tacitly accepts at marriage.[105] This, as we shall see later, was a great reform, for it, sometimes contrary to the Biblical law, makes the female instead of the male children the real heirs of the father's property.

That this was a very early enactment can be seen from the fact that the Mishnah does not speak of it as an innovation, but as an old tradition.

The support of one's daughter out of his property after his death is not the fulfilment of an obligation towards his children, but towards his wife. The daughters derive this right through the expressed or implied contract given to the mother. That this provision should be looked upon as imposing on the father a duty not towards the children, but towards the wife, is due to the fact that it was she primarily that suffered when her daughters were rendered helpless by the death of her husband. Her own condition was deplorable, and she, not less than the daughters, was dependent on the good will of the sons. Her struggle for existence became still severer by the lack of a solid basis for the support of the female orphans. But in time many enactments were made for the amelioration of the condition

[104] Ket. IV, 12; Gem., *ibid.* 52 b. [105] Ket. 68 b.

of the widow (see Ketubbot 4. 12). But she would certainly not have been fully relieved, had the orphaned daughters not been provided for. The next step then was to remove this disturbing element, and to give legal protection to the orphaned daughter. Thus it was that the duty to support the daughter was classed among the duties of the husband towards his wife. We are, however, justified in treating it here, since the female children are the direct beneficiaries of this duty.

In harmony with the conception concerning the support of the daughter outlined in the last paragraph, the law states that if the parents enter into marriage with the understanding that the father does not take upon himself this obligation, the daughter does not possess this right. Had the support of the daughter been the exclusive right of the children, the mother would never have been able to deprive them of it. The mother possesses this power only because she herself was primarily the person in whose favour the enactment of 'supporting the daughter' was established. The daughter, however, cannot be deprived of her right of support by a will in which the father objects to the use of his property for that purpose (Ketubbot 68).

The time during which the fatherless female child was to be supported from the inherited property of the males, lasted, according to the terms of the provision, to her marriage. It does not seem that, originally, the female children lost this right with the attainment of majority, if such a thing as becoming of full age at the age of twelve or twelve and a half was known in that period at all. If the introduction of such an institution was at all necessary, it was so that it might serve the female orphan during the time when she had no other source of income, and that was

before her marriage. After twelve and a half, she was as helpless as she was before. Besides, the Biblical law knows no other changes in the life of a female except that caused by marriage, and, therefore, we are justified in assuming that the early law with regard to the support of the orphan daughter was in keeping with this Biblical law, and especially so, when it is corroborated by the wording of the provision.

Later, however, scholars declared that the female orphan loses this right as soon as she reaches the first age of majority (the age of twelve and a half), even though she is not married.[106] She also loses this right when she becomes betrothed.[107] According to some scholars, this is so even though she is under twelve. According to others, she loses this right only when she is betrothed while she is a *na'arah*. Still, others maintain that this law is to be applied only when she became betrothed without the consent of her brothers, but not when she obtained their consent.[108]

The support of the female orphan includes food, garments, and a dwelling.[109] This provision, being the result of a contract, is to comply with the laws regulating all other forms of contractual obligations, and gives, therefore, the court the power to draw the means of support only from real estate or immovable property. The Talmud mentions the view according to which the female orphan

[106] Ket. 53 b, 68 b; Tosef., *ibid.* IV, 17; Yer., *ibid.* XII.

[107] Ket. 53 b; Eben ha-Ezer, 112, 3. The reason for the enactment concerning the support of the female orphan is that she may not become helpless, and go around begging. But now the bridegroom will not let her go around begging, and will support her.

[108] Eben ha-Ezer 112, 3.

[109] *Ibid.* 112, 6.

should be supported also from movable property.[110] Yet this view was not accepted by the majority of scholars, and in spite of the fact that it was maintained by so eminent an authority as Raba, the final conclusion is that this support cannot be drawn from movable property.[111]

Yet this limitation was not fully in force. In practice, many Rabbis attempted to disregard it, and were withheld only by the interference of other Rabbis. Practical life demanded that this limit should be disregarded. A case came up before a Rabbi, who out of pity wanted to have the expenses of support covered from movable property, as the orphans possessed no real estate. But he was prevented by another Rabbi who was afraid that this usage might become a general law.[112]

Finally, however, conditions changed, and the possession of real estate ceased to form an important feature in the life of the people. As a result, the law limiting the payments of the Ketubbah and its contents, including the support of the daughter, to immovables, defeated the very purpose for which the Ketubbah contract was established. The Geonim enacted that the payments of the Ketubbah and all that goes with it should be defrayed even from movable property.[113] Thus the orphan daughter secured another privilege which tended to her protection and general welfare.

If the property left by the father is not sufficient for

[110] Ket. 50 b. [111] *Ibid.* 50 b, 51 a. [112] *Ibid.* 50 b.

[113] Originally the Gaonic enactment referred to the Ketubbah proper (the amount of money the wife is to get after the death of her husband, or at the time when she is divorced). But later authorities interpreted it as having the same force for all other contractual obligations that go with the Ketubbah. There are, however, other authorities who do not accept this interpretation (see Tos. Ket. 51 a; Eben ha-Ezer 112, 7).

the support of both the male and female orphans, then the whole property should be given away to the females.[114] This is already the climax of the reform introduced concerning the support of the female orphan, for in this instance the females become the practical heirs, contrary to the Biblical law, which declares that inheritance is the exclusive right of the males.[115, 116]

This law is to be applied only when the property consists of real estate. When it consists of movable property, the female has no more privileges over it than the male, for the Gaonic enactment that the female minor be supported from movable property, gave to the female a claim only equal to, but not greater than that of the males.

The Court is to prevent the males from selling any of the inherited property, even when there is property enough to maintain all the children.[117] The support of the daughter takes precedence over the rights the sons have with regard to the Ketubbah of their mother.[118] If there are both minor and adult females, we do not set apart an amount for the support of the minors, and then divide the rest equally among the daughters. The division is to be made of the whole amount.[119]

The Talmud is not decisive as to whether the rule that

[114] Ket. 108 b.

[115] It is true that, theoretically, the males are still the heirs, and the females become the possessors of the property only through a contractual obligation. This well illustrates the general principle of the development of Jewish law. While no law is directly abolished, means are found by which these laws are practically abolished.

[116] Nor was this reform introduced without a protest. Admon raised his voice against it (Ket. 108 b).

[117] Eben ha-Ezer 112; Ket. 43 b.

[118] *Ibid.* 112, 17.

[119] B. B. VIII, 8.

the daughter is to be supported extends to the following cases: (1) the minor daughter who has annulled by Mi'un the marriage contracted for her by her brothers or by her mother;[120] (2) the daughter who is the issue of a rabbinically prohibited marriage;[121] (3) the daughter that was born while the parents were betrothed;[122] (4) and the daughter born to him as the issue of violating her mother before marriage.[123]

B. Education.

(1) *Instruction.*

As we have seen in the first chapter, there is already in the Bible a provision, imposing on the father the duty of instructing his children. As a matter of fact, the duty to teach the Torah is not confined to one's own children. A man is morally bound to teach the Torah even to his neighbour's children. Yet the duty to teach one's own children takes precedence over the duty of teaching his

[120] Ket. 53 b. The doubt is due to the fact that a marriage invalidated by Mi'un may lose the status of a marriage altogether.

The solution of this problem may perhaps depend on whether we accept the attitude of Rabbi Eliezer or Rabbi Joshua with regard to Mi'un (see Yeb. 108 a).

[121] Ket. 53. In this case the mother does not possess the right to the Ketubbah, and consequently the daughter may lose her right to support which forms a part of the Ketubbah. According, however, to the conception that the enactment of supporting the daughter tended to give a new right to the mother, the daughter in this case should not be supported. But certainly the conception of the enactment acquired in time new meanings, and the support of the daughter came to be looked upon as being a right of the daughter independent of her mother.

[122] Ket. 54 a.

[123] *Ibid.* In this case also the mother whom the seducer marries is deprived of the Ketubbah, and consequently the daughter may lose her right also.

grandchildren, and the duty to teach his grandchildren takes precedence over the duty of teaching other children.[124]

This Biblical provision reflects a period when the children received instruction personally from the father, and no teachers existed for that purpose. Consequently there was no necessity of providing for the expense of the schools.

Later, when Jewish life became more complex, schools arose.[125] The teacher was not paid for the instruction proper, for according to Jewish law one must not take reward for religious instruction.[126] The reward that he received was merely compensation for the time that he spent in teaching the children, or for the benefit that accrued to the children from their teacher's care.[127] The expense of the school was covered by the parents of the pupils.[128] Jewish law decides that we may force a man to hire a teacher for his children, but not for the children of his neighbours.[129] This legal duty is enforced as far as instruction in Bible is concerned. But we may not force a father to hire a teacher to instruct his children in advanced studies, such as Mishnah, Halakah, &c.[130]

In the absence of the father, the Court has a right to draw from his property the expenses for the instruction of his children.[131] The father has a right to dedicate his means for his own instruction in preference to that of his son, if the means are not enough to cover the expenses of instruction for both. If the son is more able than the

[124] Kid. 30 a ; Yoreh Deah 245, 3.

[125] According to Krauss (*Tal. Arch.*, III, 199, &c.), this took place about 130 B. C. See also B. Batra, 21 a ; Jer. Ket. VIII, 11.

[126] Ned. 36, 37 a ; Lev. r. 31. [127] *Ibid.*

[128] See Krauss, *ibid.* vol. III, p. 199, &c. [129] Yor. Deah 245, 4.

[130] Ned. 36, 37; Kid. 30 a. [131] Yoreh Deah 245, 4, gloss of Isserles.

father, and will make more progress in his studies than the latter, then the son's instruction takes precedence over that of the father.[132]

The Rabbis did not fail to impress the people with the importance of this duty by many moral precepts. The teaching of Torah to one's son, they declare, is like receiving it on Mount Sinai.[133] The one who teaches Torah to his son is as one who teaches it to all his descendants.[134]

(2) *Initiation into the Religious Life.*

It is the duty of the father also to initiate his son into the religious life. We have already shown before that it is the duty of the father to instruct his minor children. The provision for this duty may not be due so much to instruction being a means by which we impart knowledge to the young, as to its being in itself an important factor in the religious training of the young.

As for the practical observance of the religious ceremonies and institutions, the father is supposed to recite with his son, as soon as he is able to speak, the first verse of Shema',[135] to buy him a Lulab as soon as he is able to use it, to buy him phylacteries when he is intelligent enough to take care of them,[136] to have him sit in the Sukkah, when he is no longer dependent on the mother.[137] Shammai, however, was more strict with the last point. He uncovered the ceiling, and put shrubbery above the bed, where the new-born child lay.[138]

In connexion with this section, we may also mention the duties of the father to have his son circumcised,[139] and

[132] Kid. 29 b; Eb. Haez. 255, 2. [133] Kid. 30 a. [134] *Ibid.* 33 a.
[135] Tosef. Hag. I, 2; Sukkah 42 a. [136] *Ibid.* [137] Sukkah 28.
[138] *Ibid.* [139] Tosef. Kid. I; Gemara, *ibid.* 29.

to redeem him from the priest, if he is the first-born. If the father is himself the first-born, and his means are not sufficient for the redemption of himself and his son, the father is to use the money for his own redemption. Rabbi Judah differs with this view, and maintains that the duty of redeeming his son takes precedence over the duty of redeeming himself.[140]

(3) *Secular Education.*

The duty of the father to educate his son is not confined to religious matters. The father is to lay down the basis for the minor's future material welfare as well. He is supposed to teach him a trade by which he should be able to subsist. Rabbi Judah remarks, the one who does not teach his son a trade is as one who teaches his son the art of highway robbery, for not being provided with a means of subsistence, the son will be forced to live on crime. Some Rabbis also include among the duties of education that of teaching his son how to swim.[141] There are traces in the Talmud which show that during the period of the second temple fathers began to instruct their children in Greek Studies, an inevitable result from the Greek influences under which the Jews came (Soṭah 49). When the war between Aristobulus and Hyrcanus broke out, the study of Greek subjects beside the Greek language was prohibited. The Patriarchal family, however, because of its close relationship with the government, was allowed to continue instructing its children also in the other Greek studies (Rashi, *ibid.*).

(*To be concluded.*)

[140] Bekorot VIII, 6 ; Gemara, *ibid.* 49.

[141] Tosef. Kid., I, 11 ; Babli, *ibid.*, 29a.